

Plant Protection Bill, 2021

Scope of the Bill

The 2021 Bill provides for the protection of plant resources by preventing the introduction and controlling the spread of plant pests to facilitate trade in plants and plant products in accordance with the obligations under World Trade Organisation Agreement on the Application of Sanitary and Phytosanitary Measures (WTO- SPS), the International Plant Protection Convention and the International Standards on Phytosanitary Measures; and for related matters.

Amendments to the Plant Protection Legislation

The current Plant Protection Act (2007) is fairly robust. However, the following amendments (insertions or amended text) have been made. The primary aim of the amendments is to ensure that the legislation aligns with international standards (through the International Plant Protection Convention) and the articles of the World Trade Organisation Agreement on the Application of Sanitary and Phytosanitary Measures (WTO- SPS).

PART 1 – PRELIMINARY

Interpretation

Section 2

This is an amendment.

The changes to this section have been made to include and revise the definitions in accordance with those used internationally (IPPC- ISPM No. 5.) A provision has also been added to take into consideration any changes in definitions without having to make annual amendments.

PART II - ADMINISTRATION

Establishment and Function of the National Plant Protection Organization

Section 5

The changes in the section addresses the need to identify the unit to perform the role of the NPPO

Functions of the Organisation

Section 6

This section is an insertion which identifies the function of the organisation carrying out the role of NPPO

Delegation of functions of the Organisation

Section 7

This section is an insertion.

This provision now allows designation of certain responsibilities to other public officials (in another Ministry, e.g. Customs) or to private parties. In certain situations, (phytosanitary emergencies, temporary shortage of phytosanitary officers etc.), the NPPO may require support by other administrative agencies on a temporary basis. In some other cases, coordination within other public bodies (e.g. extension or research services for the reporting of pest outbreaks) may be needed on a more regular basis. In accordance with the most recent updates and discussions around ISPM 7 and the issuance of a phytosanitary certificate, the NPPO may delegate any duly qualified public officer that is not within the NPPO, but under the supervision of the NPPO, to issue a phytosanitary certificate. This provision sets out what cannot be delegated and lays the foundation for agreements or regulations, which will specify the matters to be addressed in delegation contracts or agreements.

Advisory Working Group

Section 10

This section is an amendment.

The Council is replaced with an Advisory Working Group to (a) ensure the Council does not take over the technical decision-making of the NPPO contrary to international standards; (b) there is a periodic mechanism for stakeholder consultations and discussions on phytosanitary matters. It was considered that a Working Group is less formal than other committees or bodies and more appropriate to the functions listed.

Register

Section 13

Insertion of new Section.

This section empowers the NPPO to establish and maintain registers of operators, and to enable them to keep records relating to consignments requiring follow up action, including trace back; and other records as necessary to manage the import and export systems. Stakeholders will provide changes (including: addresses, email, tel. nos.)

Duty to assist and co-operate

Section 15

Insertion of new Section.

This is a standard clause to enable the cooperation of a broad range of actors who may have a role in assisting enforcement, and will be particularly useful in times of emergency. It is in line with ISPM 15 section 6, and ISPM 20 sections 2 and 5.1. This can be elaborated through MoUs, which can explain the roles of the services or agencies who assist the NPPO.

PART III

IMPORTS

Duty to declare regulated articles brought in person

Section 19

Insertion of new Section.

The Act should create the obligation of persons entering into the country to declare plants, plant products or other regulated articles as this is a pathway for the entry of pests and diseases that should be controlled. The existing Customs Declaration Form question requires a legislative basis in this Act.

Inspection on importation

Section 20

This is an amendment.

Section 20 has been amended to insert new subsection (5) and (6). Subsection (5) is necessary to confirm the NPPO's authority over regulated articles until they are cleared as meeting the requirements of Barbados. Subsection (6) empowers the NPPO to carry out inspections in the country of origin. These changes are aligned with section 5 of ISPM 20, which outlines the operation of an import system.

Border inspection facility

Section 21

Insertion of new Section.

Through this provision, whether the owner of such facilities is public or private, the required space and furnishings must be provided to enable the NPPO to carry out specified functions. Subsection (4) allows for the recuperation of the costs of establishing such facilities if these are not provided by the owner as per the requirements of subsections (1) and (2).

Duty to report and seize certain imports

Section 26

This is an amendment.

This section has been amended to expand the list of persons who are under a duty to report and detain certain imports.

PART IV

EXPORTS AND CONSIGNMENTS IN TRANSIT

Transit

Section 30

Insertion of new Section.

Article VII.4 of the IPPC requires parties to apply measures to transit consignments only where

technically justified and necessary to prevent the introduction and or spread of pests. It should be noted that in the current Act, consignment in transit was defined but not addressed in a substantive provision.

This section also reflects the provisions of ISPM 12 (in particular section 3.3) under which the NPPO need not issue a certificate where a consignment is in transit and is not exposed to infestation or contamination by pests. Conversely where it has been contaminated, or if the consignment is combined, repackaged or split up, a re-export phytosanitary certificate will be required.

PART VI

ENFORCEMENT

Appeals

Section 49

Insertion of new Section.

This section offers a two-tier system of review of decisions and appeals, that is, where any person is aggrieved by a decision or action of a phytosanitary inspector, he may file an administrative claim to the Chief Agricultural Officer, whose decisions on technical issues are final. Aggrieved persons can, after such decision also appeal via the court system on matters of law only.

PART VII

OFFENCES AND PENALTIES

Fixed penalty notice for prescribed offences

Section 58

Insertion of new Section.

This provision would allow for the imposition of spot fines for the punishment of minor infractions through the issuance of fixed or ticketed penalties, which can be imposed immediately by inspectors according to the established procedures. Regulations would specify what constitutes an offence that would trigger this sanction option (though this is very specifically circumscribed in

subsection (2) as to what can count as such offence) and would set out the form of the fixed penalty ticket. The provision is clear that there is an option to dispute the ticket and appear before a magistrate and another option to pay the fine. Where the person pays on time, no additional action should be taken and there is no criminal or other record to be lodged against such person or entity.

Compensation

Section 61

Amendment to Section.

Compensation is a policy decision of the Government, and thus the scope of such compensation is a decision for the Government to make. However, Subsection (1) (c) is proposed here to broaden the scope of possible compensation.

PART VII

MISCELLANEOUS

Charging of fees

Section 63

This is the insertion of new Section.

Fees can be charged by the NPPO on the basis of cost-recovery and the setting of fees should be transparent, and thus published in regulations.

Documents

Section 64

Amendment to Section.

A minor amendment is made to the section to provide that a hard copy of a document submitted electronically will only be necessary where there is a specific requirement to do so.